

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15601 of 2001

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Dr. Anirudh Prasad, son of Shri Sakaldeep Lal, General Manager, District Industries Centre (DIC), Muzaffarpur, presently, on deputation, at the headquarters in the Industries Department, Vikas Bhawan, New Secretariat, Govt. of Bihar, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Deptt. of Industries, New Secretariat, Govt. of Bihar, Patna,
2. Director of Industries, Department of Industries, New Secretariat, Govt. of Bihar, Patna,
3. The District Magistrate-cum-Collector, Muzaffarpur,
4. The Functional Manager (Discharging Functions of General Manager), District Industries Centre, Muzaffarpur through the Industries Department, Govt. of Bihar, Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Banwari Sharma, Advocate.

For the Respondent/s : Mr. Sita Ram Yadav, G.P. 16.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 06-02-2018

Heard learned counsel for the petitioner and learned counsel representing the State.

2. The petitioner in the present case prays for the following reliefs:-

“(i) Mandamus :

(a) Direction or directions be issued to the respondents to pay the current salary to the petitioner;

(b) Direction to respondents to pay the arrears of salary w.e.f. 18-8-1992 to the petitioner; after adjusting the amount whatever the petitioner has already received from Respondent-1.



(c) The respondents be further directed to deposit the employer's contribution towards the CPF/GPF Scheme of the petitioner from 18-8-1992.

(ii) Any other relief or reliefs for which the petitioner maybe found entitled to.”

3. Learned counsel for the petitioner submits that this petitioner was appointed as a General Manager of the District Industries oCentre (DIC), Muzaffarpur on 01.01.1991. He was, however, removed from the said post on 14.08.1992. The order of removal was challenged in CWJC No. 10300/1992 and the said Writ Applicatin came to be disposed of vide judgment and order dated 21.08.2000. The operative part of the judgment and order dated 21.08.2000 reads as under:-

“17. For the reasons aforesaid, I declare the impugned order of termination dated 14th August, 1992 as illegal and direct the Respondents/State to treat the petitioner as continuing against the post of General Manager, D.I.C., Muzaffarpur since the date of such termination.

18. The Respondents are directed to reconsider the case of the petitioner for absorption of his service under the State in the light of decision of this Court dated 13th March, 1997, passed in C.W.J.C. No. 3712 of 1994 and analogous cases, in the aforesaid background.”

4. Learned counsel further submits that the matter of absorption of the petitioner was pending consideration at the government level for a considerable period, however, finally the Department of Industries, Govt. of Bihar issued a notification bearing



Memo No. 895 dated 03.03.2003 as contained in Annexure-13 to the petitioner's rejoinder to the counter affidavit on behalf of respondents no. 2, 3 & 4. From the said notification it would appear that in compliance of the orders passed by this Court in CWJC No. 2410/94, 3066/94 & 3712/94 on 13.03.1997, the respondent authorities in partial modification of the government order no. 2284 dated 26.04.1999 decided to absorb the services of two Executive Managers. The name of this petitioner appears at Sl. No. 2 showing him under suspension. He has been absorbed with effect from the date of taking over of the District Industries Centre, Gaya by the Government, i.e., w.e.f. 28.02.1994.

5. The grievance of the petitioner is that by virtue of the said notification, as contained in Memo No. 895 dated 03.03.2003, he became entitled to get the pay and emoluments attached to the post on which he was absorbed in the District Industries Centre at Gaya w.e.f. 28.02.1994 but, in fact, he has been deprived of the benefits attached to the post and the monetary benefits have not been allowed to the petitioner. The petitioner claims that he continued to serve the organization which was under the government till 06.06.2002 when he is said to have resigned and was relieved. Learned counsel for the petitioner is, however, unable to show the letter of resignation or acceptance thereof at the government level. It is his case that he



resigned and had joined another service after 06.06.2002. In sum and substance, the grievance of the petitioner now is confined to the monetary reliefs which he claims by virtue of the service rendered by him in the District Industries Centre pursuant to his absorption w.e.f. 28.02.1992.

6. A counter affidavit was filed earlier on behalf of the respondents State sworn by the Joint Director of Industries, Department of Industries, Government of Bihar. He has taken a stand that during the period of termination of his service by the District Industries Centre, Muzaffarpur the petitioner joined in another Non Government Organization, i.e., D.I.C., Gaya managed by Gram Nirman Mandal, Sarvoday Ashram, Shekhodara, nawadah and there he was placed under suspension by the Non Government Organization. The petitioner suppressed this very fact and remained absent from the Headquarters fixed by the Gram Nirmal Mandal during the period of suspension. It is further stated that the petitioner not only violated the order of the employer, i.e., D.I.C., Gaya but again joined in another Non Government Organization, namely, Single Window System at the Headquarters fixed by his employer. The petitioner managed to procure surreptitiously some letters / orders in his favour showing himself deputed at Patna Secretariat. It is stated in the counter affidavit that the petitioner again submitted his joining



to the post of General Manager, D.I.C., Gaya on 16.12.2000 without any administrative order of the government or without being absorbed by the government. He was paid the subsistence allowance by his employer to the extent of Rs. 1,67,885.85 for the period from 13.05.1996 to 15.09.1998 on the direction of the Hon'ble Court.

7. A stand has been taken in the counter affidavit that since the petitioner was under suspension by the District Industries Centre, Gaya and had shown himself working in another N.G.O. including the Single Window System, the service of the petitioner could not be absorbed by the government in the light of the decision dated 13.03.1997 passed in CWJC No. 3712/1994. However, in pursuance of the order passed by the Hon'ble Court, the management of the D.I.C., Muzaffarpur and Gaya have already been taken over by the Government. At the relevant time, while filing the counter affidavit a stand was taken that the service of the petitioner had yet not been considered to be absorbed by the government.

8. Learned counsel for the petitioner submits that the counter affidavit on behalf of the State seems to have been filed prior to issuance of the notification as contained in Annexure-13 which is dated 03.03.2003 and by which the service of the petitioner was absorbed with effect from the date of taking over of the D.I.C., Gaya.

9. To this Court, it appears that even though the petitioner



prima facie seems to have been absorbed w.e.f. 28.02.1994 pursuant to the notification, as contained in Annexure-13, but in the facts and circumstances stated in the counter affidavit on behalf of the respondents State whether he would be entitled for the monetary benefits of the post in question remains an unanswered question and the respondents have not taken any decision with regard thereto in case of the petitioner. Nothing has been pointed out to this Court to show that at any stage the respondents have decided the claim of the petitioner. This Court can *prima facie* appreciate the issues which would be required to be looked into for purpose of the monetary benefits because the working of the petitioner is not specifically admitted in the counter affidavit. Since there are some facts which are in the domain of the employer and this Court cannot become a fact finding Court on those issues, it would be only just and proper to direct the competent authority, i.e., the Principal Secretary, Department of Industries, Government of Bihar to decide the claim of the petitioner taking into consideration the entire facts and circumstances as also the stand of the petitioner as well as the department which have been *prima facie* indicated here-in-above.

10. This Court is not recording any opinion on the merit of the claim of the petitioner. The petitioner, if so advised, may bring the entire facts and circumstances to the notice of the Principal Secretary,



Department of Industries, Government of Bihar together with all supporting evidence whatsoever which he may desire within a period of four weeks from today and on such claim being filed by the petitioner, the Principal Secretary, Department of Industries, Govt. of Bihar will consider the same within next two months from the date of such claim / representation of the petitioner. The Principal Secretary, Department of Industries, Govt. of Bihar shall pass a reasoned order and the same shall also be communicated to the petitioner within a reasonable time.

11. The Writ Application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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